
State Water Resources Control Board

NOTICE OF STATUS CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office
will hold a Status Conference
on the pending application (A029657) of

The County of San Joaquin

for a permit to appropriate water from the
South Fork American River at the Freeport Regional Water Authority Facility
on the Sacramento River

**The Status Conference will begin on
February 16, 2021, at 9:30 am**

via Zoom teleconference.

Interested members of the public who would like to watch this hearing without participating may do so through the Administrative Hearings Office YouTube channel, accessible by clicking on “Watch AHO Hearings” at:
https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

Background

San Joaquin County (County or Applicant) filed water-right Application 29657 (Original Application) with the State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division) on February 9, 1990. The Original Application requested a permit to appropriate 620 cubic feet per second (cfs) of water by direct diversion and 190,000 acre-feet per year (afy) of water by diversion to storage, with an annual diversion limit of 322,000 afy. The proposed season of diversion is December 1 of each year through June 30 of the following year. The proposed uses of water are municipal, industrial, and irrigation within a gross service area of 399,700

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

acres within San Joaquin County, including municipal water supply for the cities of Lodi, Stockton, Lathrop, and Manteca.

The Original Application identified two alternative sources of water and sets of proposed points of diversion for the appropriation. Under Alternative A, the County would divert water from the American River at Nimbus Dam through the Folsom South Canal to storage in a proposed Clay Station Reservoir on Laguna Creek. Alternative A includes Laguna Creek as a source of water in addition to the American River. Under Alternative B, the County would divert water from the South Fork American River to storage in a proposed County Line Reservoir on Deer Creek, and a proposed Clay Station Reservoir on Laguna Creek. Alternative B includes Deer Creek and Laguna Creek as sources of water in addition to the South Fork American River.

Since filing the Original Application, the County has filed four amendments to the application, dated: August 31, 2003 (Amended Application), April 28, 2005 (Second Amended Application), October 10, 2007 (Third Amended Application), and June 27, 2014 (Fourth Amended Application).

The Amended Application reduced the proposed maximum authorized rate of diversion to 350 cfs, the proposed maximum authorized amount of annual diversions to storage to 147,000 afy, and the maximum combined annual diversions to 147,000 afy. The Amended Application did not include any of the proposed points of diversion identified in the Original Application and substituted a new proposed point of diversion at the Freeport Regional Water Authority Intake Facility on the Sacramento River. The Amended Application also included various proposed points of rediversion, and storage in a proposed Duck Creek Reservoir on Duck Creek, tributary to the Calaveras River. In an attachment to the application, the County confirmed that it agreed to prepare the water availability studies that are necessary to assure that its diversions from the Sacramento River would not exceed the amounts of water available at the proposed point of diversion on the South Fork American River identified under Alternative B of the Original Application.

The Second Amended Application retained the revisions of the Amended Application, included new and revised proposed points of rediversion, and added underground storage in the groundwater basin underlying the proposed place of use in San Joaquin County as a method and place of storage.

The Third Amended Application added a more-thorough description of the methodology that the County would use to measure the amounts of water placed into and withdrawn from underground storage, added proposed points of rediversion, and updated the description of proposed points of rediversion identified in the Second Amended Application.

The Division issued a public notice of the Third Amended Application on January 25, 2008, and a public re-notice of the Third Amended Application on March 12, 2008. The Division received 16 protests to the application, all of which remain unresolved.¹

On October 19, 2010, the Division issued an order cancelling Application 29657 because the County had failed to provide information requested by the Division, including information necessary to comply with the California Environmental Quality Act, and failed to diligently pursue the application. On November 18, 2010, the County submitted a petition for reconsideration of the Division's order cancelling Application 29657. On June 10, 2011, the State Water Board granted the County's petition for reconsideration. (State Water Board Order WR 2011-0014-EXEC.) The Board remanded the matter to the Division to act on the County's proposed application-development schedule, and to cancel Application 29657 again if "it becomes apparent that the County will not meet the timelines in any Division-approved project schedule." (*Id.*, p. 3.)

On October 3, 2011, the Division approved an application-development schedule. The Division's approval of additional time for the County to pursue Application 29657 was contingent on the County's timely completion of all elements of the schedule. The Division informed the County that its failure to meet any of the deadlines or its failure to provide requested information could result in cancellation of the application without further notice. (Barbara Evoy, Deputy Director of the Division of Water Rights, letter to Thomas J. Shephard, Sr., October 3, 2011.) The Division modified this approval at the request of the County on December 14, 2011, to extend several deadlines in the application-development schedule. The last correspondence from the County in the Division's files for this application is the County's Fourth Amended Application, dated June 27, 2014.

The Fourth Amended Application removed the proposed Duck Creek Reservoir as a place of storage and removed the proposed points of re-diversion for the reservoir. The Fourth Amended Application added information about the proposed underground storage through recharge basins adjacent to the North San Joaquin Water Conservation District's and Stockton East Water District's existing and proposed conveyance infrastructure systems. The County included an amended application-development schedule with the Fourth Amended Application. The proposed amended schedule did not include all elements of the schedule previously approved by the Division and proposed postponing some important deadlines in the schedule the Division approved in 2011.

¹ The Division counted the joint protest filed by the Department of Fish and Wildlife, North Central Region, and the Department of Fish and Wildlife, Delta Region, as two separate protests. If this joint protest is counted as one protest, the Division received 15 protests to the County's application.

ASSIGNMENT OF PETITIONS TO THE ADMINISTRATIVE HEARINGS OFFICE

Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board. Water Code section 1112, subdivision (c)(2), provides that the State Water Board may assign adjudicative hearings to the AHO. Subdivision (c)(3) of this section provides that an AHO hearing officer may perform additional work requested by the Board.

On June 24, 2020, Erik Ekdahl, Deputy Director of the State Water Board's Division of Water Rights (Division), sent a memorandum to Eileen Sobeck, the State Water Board's Executive Director, proposing to transfer Application A029657 to the AHO. On June 24, 2020, Ms. Sobeck issued a memorandum assigning the application to the AHO.

HEARING OFFICER AND HEARING TEAM

A hearing officer from the AHO will preside during the status conference. Other AHO staff members may be present and assist the hearing officer during the status conference.

STATUS CONFERENCE

The AHO hearing officer will hold a status conference on the date and at the time specified on the first page of this notice. The AHO will circulate the Zoom teleconference information to each person or entity who files a Notice of Intent to Appear (NOI, discussed below). Because of the current COVID-19 crisis, no in-person appearances will be allowed. The status conference will be electronically recorded by Zoom teleconference. The hearing officer will prepare a status conference order after the conference. The AHO will not retain a court reporter for the status conference. Any party may arrange for a court reporter at his, her, or its own expense.

The status conference will address the following issues:

- (1) Does the County still want to pursue Application 29657?
- (2) Does each of the protestants want to maintain his, her, or its protest to Application 29657?
- (3) What is the status of each action item on the application-development schedule? The action items include:
 - a. Development of a project-specific Environmental Impact Report,
 - b. Negotiation for the right to use the Freeport Diversion Facility as the point of diversion for the project, and
 - c. Resolution of protests.

- (4) Should the AHO schedule a public hearing to consider whether the State Water Board should cancel, reject, or deny Application 29657 under Water Code section 1276 or section 1335, or California Code of Regulations, title 23, sections 683 or 840? If so, when should the hearing be held?
- (5) Any other procedural issues raised by the participants.

PROHIBITION ON EX PARTE COMMUNICATIONS

All parties are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10- 11430.80.) For a discussion of *ex parte* communications regarding State Water Board members, see "Ex Parte Questions and Answers," available on the State Water Board's website at:

http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf. These rules regarding *ex parte* communications apply to all members of the AHO hearing team.

If any party wants to communicate with the AHO at any time regarding any procedural or substantive issue related to these proceedings, including the status conference, then that party shall make such communication to the AHO by e-mail or letter. The party shall serve all other parties on the service list with copies of the communication and include a proof of service demonstrating such service with the written communication to the AHO. A party may provide this proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic-mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties listed on the service list in the cc portion of the letter. The service list for this proceeding is attached to this notice.

Please do not attempt to communicate by telephone or in person with any AHO team member regarding any procedural or substantive issue concerning this proceeding. If oral communications with any members of the AHO team are necessary to discuss any procedural or substantive issue, then the AHO will set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above.

NOTICES OF INTENT TO APPEAR

Any person or entity who wants to participate in this status conference must file a Notice of Intent to Appear (NOI), using the form in this notice, with the AHO before the deadline listed below. The AHO encourages parties to agree to accept electronic service (by e-mail) of all documents regarding this proceeding. If a party is not willing to do this, then the party may check the appropriate box on the NOI form. If this box is not checked, then the AHO will assume that the party agrees to accept electronic service.

If the AHO does not receive an NOI from the Applicant indicating the Applicant's intent to participate in the status conference before the deadline specified below, the AHO may transmit a proposed order to the Board that would cancel Application 29657 without holding a hearing. If the AHO does not receive an NOI from any protestant, the AHO may transmit a proposed order to the Board that would cancel that protestant's protest.

STATUS CONFERENCE STATEMENTS

On or before the deadline listed below, each participant shall submit and serve a status conference statement that separately addresses each of the status conference issues listed above that the participant wants to address. The participants also may include in their status conference statements discussions of any other issues they believe are relevant. Parties with common interests may file joint status conference statements.

NOI and Status Conference Deadlines and Schedule

Deadline for filing NOIs and status conference statements, including proofs of service.	February 9, 2021, 4:00 pm
Status conference date and time.	February 16, 2021, 9:30 am

SUBMITTAL OF DOCUMENTS TO AHO AND OTHER PARTIES

All documents submitted to the AHO, including NOIs and status conference statements, shall be addressed and submitted by one of the following methods (with proofs of service, as discussed above):

By Email:	AdminHrgOffice@waterboards.ca.gov With Subject Line " San Joaquin County Application A29657 "
By Mail:	State Water Resources Control Board Administrative Hearings Office P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see instructions below):	Joe Serna Jr. CalEPA Building Administrative Hearings Office c/o Water Rights Records Unit 1001 I Street, 2 nd Floor, Room 114 Sacramento, CA 95814

Service of documents by hand-delivery may be more difficult or delayed due to building or office closures during the COVID-19 pandemic. Please plan ahead if you wish to hand deliver documents. Any hand-delivered submittals must be date-and-time

stamped by the Division of Water Rights Records Unit personnel before the submittal deadline. Persons delivering submittals to the Records Unit must first check in with CalEPA Building lobby security personnel on the first floor of the CalEPA Building and obtain authorization to go to the Water Rights Records Unit on the second floor.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for internet website accessibility in Government Code section 11546.7, the AHO has posted and will post all notices and other documents regarding these proceedings on the AHO's internet webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

Any interested person or entity may sign up to receive all AHO notices at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html

STATUS CONFERENCE LIVE-STREAM AND RECORDING

The status conference will be live-streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. After the conclusion of the hearing, a recording of the YouTube live-stream sessions will be available on the Administrative Hearings Office YouTube channel. These recordings will include automatic captions for accessibility.

The live-stream and recordings may be accessed at the following link:
https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig?view_as=subscriber

ADMINISTRATIVE RECORD

The AHO has copied documents from the public records maintained by the State Water Board's Division of Water Rights relevant to this proceeding and has included them in the initial administrative record. The AHO has posted files of these documents to its FTP site. Instructions to access the FTP site are on the AHO's webpage at: https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2020_05_05_notice_ftp2.pdf

In addition to the YouTube live recording, the AHO will make Zoom recordings (video+audio and audio-only) of the status conference and will include these Zoom recordings in the administrative record.

January 5, 2021 _____

SIGNATURE ON FILE _____

Nicole L. Kuenzi
Hearing Officer

Enclosures:

- Notice of Intent to Appear Form
- Service List



State Water Resources Control Board

NOTICE OF INTENT TO APPEAR FORM

_____ (name of participant) plans to participate in the status conference regarding the San Joaquin County Application 29657.

Scheduled to begin on February 16, 2021

Name (type or print):

Represented party (if applicable):

Mailing Address:

Telephone Number:

E-mail Address:

Optional:

I/we decline electronic service of hearing-related materials.

Signature: _____

Date: _____

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

SERVICE LIST

By U.S. Mail and E-Mail (if listed):

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